

ENTERED

February 20, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TALA BERRY

Plaintiff,

v.

WAL-MART STORES TEXAS, LLC

Defendant.

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CIVIL ACTION NO. H-18-4619

ORDER

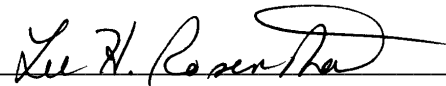
In November 2018, Tala Berry sued Wal-Mart Stores Texas, LLC in state court, asserting claims for negligence and premises liability. (Docket Entry No. 1-2 at 4–6). Wal-Mart removed based on diversity jurisdiction. (Docket Entry No. 1). Berry then amended her complaint to add Anthony Henderson, a Texas resident, as a codefendant. (Docket Entry No. 12). Wal-Mart moved to strike the amended complaint on the ground that Berry did not ask the court for leave before amending to add Henderson. (Docket Entry No. 13). If he is a party, diversity jurisdiction is destroyed.

Although Federal Rule of Civil Procedure 15(a) allows a party to amend its pleading “21 days after service of a responsive pleading or 21 days after services of a motion under Rule 12(b), (e), or (f),” Berry must move for leave before amending her complaint to add Henderson, a nondiverse party, whose addition destroy the court’s jurisdiction. *See, e.g., Brown v. Entrust Admin. Servs.*, No. H-10-5220, 2011 WL 1230275, at *2 (S.D. Tex. Mar. 30, 2011); *Adey/Vandling, Ltd. v. Am. First Ins. Co.*, No. A-11-CV-1007-LY, 2012 WL 534838, at *2 (W.D. Tex. Feb. 17, 2012);

Young Scholars Child Dep't Ctr., Inc. v. Colony Ins. Co., No. 09-1924, 2010 WL 797848, at *4 (W.D. La. Mar. 1, 2010).

The amended complaint is stricken. The parties are ordered to brief whether 28 U.S.C. § 1447(e) allows Berry to add Henderson, a nondiverse party, as a codefendant. Berry must move for leave and file her brief by **March 8, 2019**. Wal-Mart must respond by **March 22, 2019**. The initial conference is reset to **March 27, 2019, at 9:30 a.m.**, in Courtroom 11-B.

SIGNED on February 20, 2019, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
Chief United States District Judge